



Comptroller General  
of the United States

Washington, D.C. 20548

144307

## Decision

**Matter of:** Rentfrow, Inc

**File:** B-243215

**Date:** July 5, 1991

Thomas M. Abbott, Esq., and Daniel T. Marshall, Esq., McKenna & Cuneo, for the protester.  
Harry M. Howton for Kestrel Associates, Inc., and Charles H. Werner for SYS, interested parties.  
Theresa A. McKenna, Esq., Department of the Navy, for the agency.  
Susan K. McAuliffe, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Award of contract on the basis of initial proposals is proper where the solicitation advised offerors of that possibility and existence of adequate competition demonstrated that acceptance of the low-priced initial proposal would result in the lowest overall cost to the government.
2. Where acceptance period expired on all proposals at time provided in RFP, contracting officer may allow proposed awardee to extend proposal acceptance period without conducting discussions with offerors.
3. Protest against technical evaluation of proposal, raised for the first time in protester's comments on agency report, is dismissed as untimely filed under Bid Protest Regulations because protest was filed more than 10 working days after incumbent contractor learned its basis of protest (i.e., when protester was told its proposal was ranked fifth out of six technical proposals and was ranked technically much lower than the proposed awardee's proposal).

### DECISION

Rentfrow, Inc. protests the proposed award of a contract by the Department of the Navy to SYS under request for proposals (RFP) No. N00123-90-R-0285, for management, planning, analytical, and administrative services for Navy combat systems at the Naval Ship Weapon Systems Engineering Station, Port Hueneme, California. Rentfrow protests that the Navy

failed to follow the RFP's cost evaluation factors for award and that its proposed indirect cost rates were improperly adjusted during cost evaluations. Rentfrow also challenges the agency's intention to make an award on the basis of initial proposals without conducting discussions, and contends that the acceptance period for the proposals has expired. In its comments to the agency's response to these contentions, Rentfrow contests the agency's technical evaluation of its proposal.

We deny the protest in part and dismiss it in part.

The RFP, which was issued on March 22, 1990, and amended three times before the May 21 extended closing date for the receipt of proposals, contemplates the award of a 1-year indefinite quantity, cost-plus-fixed-fee contract with two 1-year option periods. Section M of the RFP sets forth the evaluation factors for award. Award is to be made to the offeror that submitted the offer determined most advantageous to the government considering cost and other factors. The RFP provides three technical factors (personnel background and experience; plan to accomplish work; and company background and experience) and explains that although cost is not as important as the overall technical factors, it is as important as the technical element of personnel background and experience, the most important technical evaluation factor. The RFP further states that costs will be evaluated for realism and adjusted, if appropriate, for evaluation purposes. Section 52.215-16 of the Federal Acquisition Regulation (FAR) is incorporated into the solicitation which provides for the award of a contract on the basis of initial offers without discussions.

Six proposals were received by the closing date. The agency proposes to make award on initial proposals to SYS, which offered the lowest cost proposal and received the highest evaluated score after technical and cost evaluations.

Rentfrow initially protests the Navy's cost realism analysis of its proposal. Rentfrow contends that the agency improperly adjusted upward its proposed rates which are lower than current Defense Contract Audit Agency approved provisional rates. The Navy, however, reports that it did not adjust Rentfrow's proposed rates and, in fact, evaluated the protester's cost proposal using the firm's proposed rates. Our in camera review of the record confirms the Navy's position. We thus find this basis of protest to be factually incorrect and see no reason to give further consideration to the issue.

Next, Rentfrow protests the agency's proposed award on the basis of initial proposals without conducting discussions.

Rentfrow argues that the agency should have conducted discussions and requested best and final offers (BAFOs) which, the protester contends, would have resulted in a cost savings to the government.

Under the Competition in Contracting Act of 1984, 10 U.S.C. § 2305(b)(4)(ii) (1988), as implemented by FAR § 15.610(a)(3) and applicable to this RFP, a contracting agency may make an award on the basis of initial proposals, and not conduct discussions or allow offerors to revise their proposals, where the solicitation advises offerors of that possibility and the competition or prior cost experience clearly demonstrates that acceptance of the initial proposal will result in the lowest overall cost to the government. Ocean Technology, Inc., B-236470, Aug. 29, 1989, 89-2 CPD ¶ 189; Maico Hearing Instruments, Inc., B-229925, Jan. 15, 1988, 88-1 CPD ¶ 42.

The Navy included the appropriate clause, FAR § 52.215-16, in the RFP advising offerors to submit their best proposals since award might be made on the basis of initial proposals. Rentfrow has not demonstrated that the Navy's selection of SYS did not result in the lowest overall cost to the government or that inadequate competition exists to support the agency's determination. See Associates Relocation Management Co., Inc., B-242437, Apr. 19, 1991, 91-1 CPD ¶ 390. Although the protester contends that requesting BAFOs would have resulted in cost savings to the agency, there is no evidence in the record which supports this contention. Rentfrow was advised to present its best price in its initial proposal, since it was possible that discussions would not be conducted, but evidently the protester failed to do so. Six proposals were received, several at costs considered reasonable to meet the agency's needs. SYS offered the lowest overall cost to the government, which amount was found to be fair and reasonable--a determination that is not contradicted by any evidence in the record. Accordingly, we have no reason to question the agency's proposed award on the basis of initial proposals without conducting discussions.<sup>1/</sup>

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<sup>1/</sup> To the extent Rentfrow contends that 10 months have passed since proposals were received and that proposed key personnel may no longer be available due to employment changes, we see no reason why this possibility would require the agency to conduct discussions where an award on initial proposals is otherwise proper. The RFP, in any event, provides for this situation since approved substitutions of equally qualified key personnel are permitted in the event of illness, death, or termination of employment. Further, the agency has confirmed that Rentfrow does not intend to substitute for its proposed key personnel.

Rentfrow also alleges that it is improper to make the proposed award to SYS because the stated acceptance period of that offer, as well as that of the other offers received, has expired. Rentfrow states that it was not asked to extend its offer and contends that if the agency contacted SYS to obtain such an extension, the agency is required to conduct discussions with all offerors.

Rentfrow is correct that all offers were allowed to expire. The record also indicates that subsequent to the expiration, the contracting officer, having decided to award to SYS on the basis of its low initial offer, requested and received only from SYS an extension of its proposal acceptance period. There is nothing inappropriate or improper about this. Where the proposed awardee originally offered at least the minimum acceptance period set forth in the RFP, as SYS did here, the firm may revive its offer without any resulting prejudice to the other offerors. See Data Technology Indus., Inc., B-197858, July 1, 1980, 80-2 CPD ¶ 2. Moreover, an agency's request for proposal revival and extension does not constitute discussions and therefore discussions need not be conducted with other offerors. See Ocean Technology, Inc., B-236470, supra.



Finally, in its comments on the agency report, Rentfrow protests the Navy's technical evaluation of its proposal and discusses in detail areas of that proposal which the agency allegedly improperly downgraded. Rentfrow disputes the Navy's conclusions regarding some of those deficiencies.

The Navy contends that this raises a new protest issue that should be dismissed as untimely since it was not raised within 10 working days of when the protester learned its basis of protest. The Navy reports that on March 11, during a meeting at which the Navy sought an extension of Rentfrow's current contract due to the present protest, Rentfrow was told that its proposal was technically ranked much lower than the proposed awardee's proposal, that the protester's technical proposal was ranked fifth out of six proposals, and that even if Rentfrow's proposal were ranked equal to SYS' technical proposal, it would not receive the award because the proposed awardee's evaluated costs were lower.

We do not find the initial protest, which only raised objections to the agency's cost evaluation and the proposed award on the basis of initial, expired proposals, sufficient to constitute a timely protest against the deficiencies found in the protester's technical proposal. Further, since Rentfrow learned, on March 11, of the agency's low ranking of its technical proposal, and thus knew its general basis of protest at that time, it was incumbent upon Rentfrow to supplement its initial protest, or file a separate protest,

within 10 working days of that date to timely raise its objection to the agency's technical evaluation, 4 C.F.R. § 21.2(a)(1) (1991). Since Rentfrow waited more than 10 working days after it learned of its basis of protest to raise its objection to the Navy's technical evaluation, that issue is dismissed as untimely. See Sach Sinha and Assocs., Inc., B-241056.3, Jan. 7, 1991, 91-1 CPD ¶ 15; see also Blue Cross-Blue Shield of Tennessee, B-210227, May 23, 1983, 83-1 CPD ¶ 555 (where we state that a protester cannot delay filing a protest until it is certain that it can detail all of the possible separate grounds of protest).

The protest is denied in part and dismissed in part.

  
 James F. Hinchman  
General Counsel